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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 KASHAWNA LIEBMAN,

Civil No. 08-586-AA
OPINION AND ORDER

11 Plaintiff,

12 vs.

13 COMMISSIONER,
Social Security Administration,

14 Defendant.

15 _____
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AIKEN, Judge:

Claimant, Kashawna Liebman, brings this action pursuant to
the Social Security Act (the Act), 42 U.S.C. §§ 405(g) and

1 1383(c)(3), to obtain judicial review of a final decision of the
2 Commissioner denying her application for disability insurance
3 benefits under Title II of the Act. For the reasons set forth
4 below, the Commissioner's decision is affirmed and this case is
5 dismissed.

6 **PROCEDURAL BACKGROUND**

7 On March 23, 2005, plaintiff filed an application for
8 disability insurance benefits. Tr. 19. This application was
9 denied initially and upon reconsideration. On June 6, 2007, the
10 ALJ continued the November 15, 2006 hearing, to allow plaintiff
11 an opportunity to submit additional evidence and attend a
12 consultative psychological examination provided by the Social
13 Security Administration. Tr. 19, 528-46, 579. The ALJ also
14 called a medical expert to testify at the hearing. Tr. 534-45.
15 At the hearing on June 6, 2007, the ALJ heard testimony from
16 plaintiff who was represented by an attorney and from a medical
17 expert. Tr. 531-45. Since the initial November 2006 hearing,
18 plaintiff had attended a consultative psychological examination
19 and submitted additional evidence, which was received and
20 reviewed by the ALJ prior to his determination. Tr. 19, 490-94.

21 On June 26, 2007, the ALJ issued a partially favorable
22 decision finding plaintiff disabled beginning March 1, 2003. Tr.
23 15-26. Plaintiff timely requested review of that decision by the
24 Appeals Council, however, on March 10, 2008, the Appeals Council
25 declined review. Tr. 8-10. Therefore, the ALJ's June 26, 2007,
26 decision became the final decision of the agency.

STATEMENT OF THE FACTS

Born May 8, 1978, and 29 years old at the time of the ALJ's decision, plaintiff alleges disability beginning February 2001. Tr. 63. Plaintiff alleges disability based on a combination of impairments as follows: pinched nerve in the brain with pain that runs down her neck into her shoulder, and down the right side of her body; post traumatic stress disorder (PTSD); anxiety with panic attacks; and depression. Tr. 549-75.

STANDARD OF REVIEW

This court must affirm the Secretary's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record. Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)). The court must weigh "both the evidence that supports and detracts from the Secretary's conclusions." Martinez v. Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

The initial burden of proof rests upon the claimant to establish disability. Howard v. Heckler, 782 F.2d 1484, 1486 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected . . . to last for a continuous period of not less than 12 months. . . ." 42 U.S.C. § 423(d) (1) (A).

1 The Secretary has established a five-step sequential
2 process for determining whether a person is disabled. Bowen v.
3 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,
4 416.920. First the Secretary determines whether a claimant is
5 engaged in "substantial gainful activity." If so, the claimant
6 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.
7 §§ 404.1520(b), 416.920(b).

8 In step two the Secretary determines whether the claimant
9 has a "medically severe impairment or combination of
10 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.
11 §§ 404.1520(c), 416.920(c). If not, the claimant is not
12 disabled.

13 In step three the Secretary determines whether the
14 impairment meets or equals "one of a number of listed impairments
15 that the Secretary acknowledges are so severe as to preclude
16 substantial gainful activity." Id.; see 20 C.F.R.
17 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively
18 presumed disabled; if not, the Secretary proceeds to step four.
19 Yuckert, 482 U.S. at 141.

20 In step four the Secretary determines whether the claimant
21 can still perform "past relevant work." 20 C.F.R.
22 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not
23 disabled. If she cannot perform past relevant work, the burden
24 shifts to the Secretary. In step five, the Secretary must
25 establish that the claimant can perform other work. Yuckert, 482
26 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &
27 (f). If the Secretary meets this burden and proves that the
28 claimant is able to perform other work which exists in the

1 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,
2 416.966.

3 DISCUSSION

4 1. The ALJ's Findings

5 At step one of the sequential analysis outlined above, the
6 ALJ found that plaintiff had not engaged in substantial gainful
7 activity from February 21, 2001, through the date of the
8 decision. Tr. 21. At step two, the ALJ found plaintiff had the
9 following combination of severe impairments: depressive/bipolar
10 disorder, PTSD, and paranoid personality disorder. Tr. 21-22,
11 25-26. At step three, the ALJ found the following: prior to
12 March 1, 2003: plaintiff did not have an impairment or
13 combination of impairments that met or medically equaled an
14 impairment listed in 20 C.F.R. § 404.1520(d). Tr. 21-22.
15 However, beginning March 1, 2003: plaintiff's severe impairments
16 of depressive/bipolar disorder, PTSD, and paranoid personality
17 disorder met the requirements of listed mental impairments in
18 sections 12.04, 12.06, and 12.08 of 20 C.F.R. § 404.1520(d), and
19 plaintiff became disabled on March 1, 2003. Tr. 25-26. After
20 finding plaintiff disabled beginning March 1, 2003, the ALJ did
21 not continue the sequential evaluation process for that time
22 period.

23 Prior to March 1, 2003, the ALJ found that plaintiff had
24 the residual functional capacity (RFC) to perform simple, routine
25 tasks in a predictable environment with few changes, where she
26 could obtain help setting realistic goals, and in a setting that
27 did not require close contact with the general public or co-
28 workers. Tr. 22. At step four the ALJ found that plaintiff was

1 able to return to her past relevant work as a file clerk. Tr.
2 24. Finally, at step five, in addition to being able to return
3 to her past relevant work, the ALJ found there were jobs existing
4 in the significant numbers in the national economy that plaintiff
5 could perform and found plaintiff "not disabled" prior to March
6 1, 2003. Tr. 24-25.

7 2. Plaintiff's Allegation of Error

8 Plaintiff brings this action appealing her onset date,
9 March 1, 2003, the date she was found to be disabled. 42 U.S.C.
10 §§ 401-33. Plaintiff alleges she was disabled nearly two years
11 earlier, February 15, 2001. I disagree and uphold the findings
12 of the ALJ, including plaintiff's onset date of March 1, 2003,
13 finding that date is "supported by inferences reasonably drawn
14 from the record." Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th
15 Cir. 2008) (internal citations omitted). I find no evidence of an
16 onset date prior to March 1, 2003. The ALJ conducted a hearing
17 in November 2006, and then continued the hearing to June 6, 2007,
18 to allow plaintiff additional time to obtain and submit evidence.
19 Tr. 547-80, 528-46. Specifically, the purpose of the second
20 hearing was to allow plaintiff the opportunity to: (1) submit
21 additional information; and (2) attend a consultative
22 psychological examination provided by the Social Security
23 Administration. Tr. 528-46, 579. The ALJ also heard testimony
24 from an impartial medical expert and vocational expert. Tr. 531-
25 45, 547-80.

26 Both parties rely on the testimony of the medical expert as
27 to plaintiff's onset date. Tr. 531-45, 579. The medical expert
28 testified that the evidence demonstrated that as of March 1,

1 2003, plaintiff's symptoms of depressive bipolar disorder caused
2 persistent symptoms of sleep disturbance, decreased energy,
3 feelings of guilt, difficulty concentrating, paranoid thinking
4 and delusional thinking. Tr. 25. The medical expert, after
5 reviewing plaintiff's records, concluded that "although plaintiff
6 had a history of mental impairments, symptoms of paranoia were
7 not significantly manifested in the record prior to March 1,
8 2003, at which point her paranoia appears as a primary focus of
9 her diagnoses." Tr. 26. The medical expert opined that
10 plaintiff's severe mental impairments met the criteria of sections
11 12.04, 12.06, and 12.08 as of March 1, 2003. Tr. 26. The
12 "established onset date must be fixed based on the facts and can
13 never be inconsistent with the medical evidence of record." SSR
14 83-20, at *3. The record supports the onset date of March 1,
15 2003.

16 Plaintiff relies on the medical expert's comment that
17 "personality disorders don't generally spring from nothing to a
18 global assessment of functioning of 30 or 35." Tr. 539. The
19 expert, however, continued, "[o]n the other hand, paranoia was
20 only a footnote in the early medical records. They were much
21 more highlighted once the more recent MMPIs were administered and
22 reported on." Id. After considering plaintiff's medical
23 records, the medical expert testified that from March 1, 2003, to
24 the date of the hearing, plaintiff's global assessments of
25 functioning were within the listing levels. Tr. 541. Therefore,
26 the medical expert testified that the "earliest" date on which
27 plaintiff could be found disabled was March 1, 2003. Tr. 540.
28 The medical expert was "hesitant" to pinpoint an earlier date

1 because plaintiff was not diagnosed with a paranoid personality
2 disorder prior to that date. Id. There is no record or
3 documentation of plaintiff's mental or emotional functioning
4 prior to March 1, 2003. Symptoms of an impairment are not
5 sufficient to establish the existence of an impairment. 20
6 C.F.R. § 404.1528(a). Plaintiff has the burden to establish a
7 severe impairment by providing medical evidence showing she has
8 an impairment and its severity during the relevant time frame.
9 20 C.F.R. § 404.1512(c). Plaintiff has failed to meet that
10 burden, and I find no evidence establishing a mental impairment
11 prior to March 1, 2003. Therefore, I find substantial evidence
12 to support the ALJ's finding that plaintiff's onset date was
13 March 1, 2003.

14 Plaintiff also asserts that her work record should have
15 been significant in determining her onset date. Plaintiff relies
16 on the medical expert's statement that because there was no
17 documentation of plaintiff's mental or emotional functioning
18 prior to March 1, 2003, "[p]robably the best way to . . .
19 determine in the absence of medical records her level of
20 functioning is to examine her work history prior to that time."
21 Tr. 542. The ALJ noted that plaintiff had minimal earnings in
22 2004 and 2005, and did not work from 2001 - 2003. Tr. 543. I
23 find, however, no evidence that plaintiff stopped working in 2001
24 due to a mental or emotional impairment. In fact there exists in
25 the record at least one explanation for plaintiff's lack of
26 employment during that time period. Plaintiff was pregnant in
27 2000-2001, and had a baby in August 2001, moved to Philadelphia
28 in 2003, and attended school in Oregon and Pennsylvania. Tr. 24,

1 96, 206, 233-34, 349, 565. Significantly, plaintiff stated that
2 she was an "at home mother" from 2001-2004. Tr. 96. Therefore,
3 I do not find plaintiff's employment record determinative of her
4 onset date.

5 I find that the ALJ adequately developed the record, given
6 the second hearing he convened to allow plaintiff ample
7 opportunity to obtain and submit additional evidence. Further,
8 the findings of the ALJ will be upheld if they are "supported by
9 inferences reasonably drawn from the record." Tommasetti, 533
10 F.3d at 1038 (internal citation omitted). Here, I find no
11 evidence of an onset date prior to March 1, 2003. Therefore, the
12 ALJ did not err and substantial evidence supports his decision.

13 CONCLUSION

14 The Commissioner's decision is based on substantial
15 evidence, and is therefore, affirmed. This case is dismissed.
16 IT IS SO ORDERED.

17 Dated this 18 day of June 2009.

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21 /s/ Ann Aiken

22 Ann Aiken
23 United States District Judge
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